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DEPARTMENT OF COMMERCE
International Trade Administration
[C-580-866]

Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea: Final
Affirmative Countervailing Duty Determination

AGENCY: Import Administration, International Trade Administration, Department of
Commerce

SUMMARY: The Department of Commerce (the Department) determines that countervailable subsidies are being provided to producers and exporters of bottom mount combination refrigerator-freezers (bottom mount refrigerators) from the Republic of Korea (Korea). For information on the estimated subsidy rates, see the “Suspension of Liquidation” section of this notice.

EFFECTIVE DATE: [Insert date of publication in the Federal Register.]

FOR FURTHER INFORMATION CONTACT: Myrna L. Lobo, Justin M. Neuman, or Milton Koch, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-2371, (202) 482-0486, and (202) 482-2584, respectively.

SUPPLEMENTARY INFORMATION:

Background

The U.S. producer that filed the petition for this investigation is Whirlpool Corporation (hereafter, Whirlpool, or “petitioner”). This investigation covers 41 programs. The mandatory respondents in this investigation are: (1) Samsung Electronics Co., Ltd. (SEC), and its cross-owned affiliates Samsung Gwangju Electronics Co., Ltd. (SGEC) and Samsung Electronics

Logitech (SEL); (2) LG Electronics (LGE) and its cross-owned affiliate, ServeOne Co., Ltd., and (3) Daewoo Electronics Corporation (DWE).

Period of Investigation

The period of investigation for which we are measuring subsidies is January 1, 2010, through December 31, 2010.

Case History

The following events have occurred since the Department published the Preliminary Determination.¹ From September through December 2011, the Department issued numerous supplemental questionnaires to all parties concerning the New Subsidies Allegations (NSA), cross ownership, and other program issues. All parties timely responded to the Department's supplemental questionnaires.

In September and October 2011, the petitioner filed comments on the supplemental responses of LGE and SEC, on the NSA questionnaire responses, and on cross-ownership of respondents. On October 17, 2011, the Government of Korea (GOK) submitted to the record the public version of a verification report from a prior investigation. Also in October, SEC filed pre-verification corrections. On October 27, 2011, the Department placed independent research on the record. On October 31, 2011, the Department placed on the record the Preliminary Scope Memorandum,² prepared in the companion antidumping duty (AD) investigation.

In November 2011, the petitioner filed new information and comments on the NSA supplemental responses of the GOK and DWE, and on suppliers and verification issues for LGE and SEC. On November 28, 2011, the petitioner met with the Department and filed pre-

¹ See Bottom Mount Combination Refrigerator-Freezers From the Republic of Korea: Preliminary Negative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Determination, 76 FR 55044 (September 6, 2011) (Preliminary Determination).

² See Memorandum from the Team to Gary Taverman, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, Re: Scope Modification Requests, dated October 26, 2011 (Preliminary Scope Memorandum).

verification comments.³ On that date, the Department also issued verification outlines to the GOK, LGE, SEC, and DWE.

The Department conducted verification from December 5, 2011, through December 16, 2011. On December 21, 2011, the Department issued its Post-Preliminary Analysis of Cross-ownership and its Post-Preliminary Analysis of New Subsidy Allegations. On that date, the Department also issued its Post-Preliminary Analysis Regarding the Restructuring of Daewoo Electronics Corporation.

On February 2, 2012, the Department issued verification reports for LGE and SEC. On February 3, 2012, the Department issued verification reports for the GOK and DWE. Also on February 3, 2012, the Department met with counsel for SEC.⁴ On February 14, 2012, the GOK, LGE, SEC, and DWE filed case briefs. On February 21, 2012, the Department issued its Post-Preliminary Analysis: GOK Preferential Lending Under the Daewoo Workout, and the GOK, LGE, SEC, and the petitioner filed rebuttal briefs. On February 24, 2012, the GOK and DWE filed case briefs on GOK Preferential Lending Under the Daewoo Workout. On February 27, 2012, the petitioner filed a rebuttal brief on GOK Preferential Lending Under the Daewoo Workout. On February 28, 2012, the Department held a public hearing, based on the timely requests of the petitioner, SEC, LGE, and DWE, filed in September and October 2011. On March 5, 2012, the Department met with the GOK and counsel for DWE.⁵

³ See Memorandum to the File from Justin Neuman, Meeting with Whirlpool Corporation Regarding the Countervailing Duty Investigation of Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea, dated November 28, 2011.

⁴ See Memorandum to the File from Gary Taverman, Ex Parte Meeting with Counsel for Samsung Electronics, Ltd., dated February 7, 2012.

⁵ See Memorandum to the File, Ex Parte Meeting with Counsel for Daewoo Electronics Corporation Regarding the Countervailing Duty Investigation of Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea, dated March 7, 2012.

Scope Comments

In the Preliminary Determination, the Department stated that it was evaluating comments filed by the parties regarding the scope in the companion AD investigation. In AD Preliminary Determination,⁶ we did not modify the description of the scope of the investigations in the manner requested by certain interested parties. Specifically, we did not modify the scope to be consistent with the Association of Home Appliance Manufacturers definition, nor did we exclude kimchi refrigerators or Quatro Cooling Refrigerators from the scope. We did, however, clarify the scope to eliminate any ambiguity with respect to the inclusion of Quatro Cooling Refrigerators in the scope of the investigation. See AD Preliminary Determination, 76 FR at 67690-67691; see also Preliminary Scope Memorandum. No party commented on our preliminary scope determination. Therefore, we have made no further changes to the description of the scope of the investigation.

Scope of the Investigation

The products covered by the investigation are all bottom mount combination refrigerator-freezers and certain assemblies thereof from Korea. For purposes of the investigation, the term “bottom mount combination refrigerator-freezers” denotes freestanding or built-in cabinets that have an integral source of refrigeration using compression technology, with all of the following characteristics:

- The cabinet contains at least two interior storage compartments accessible through one or more separate external doors or drawers or a combination thereof;

⁶ Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Negative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers From the Republic of Korea, 76 FR 67675 (November 2, 2011) (AD Preliminary Determination).

- An upper-most interior storage compartment(s) that is accessible through an external door or drawer is either a refrigerator compartment or convertible compartment, but is not a freezer compartment;⁷ and
- There is at least one freezer or convertible compartment that is mounted below an upper-most interior storage compartment(s).

For purposes of the investigation, a refrigerator compartment is capable of storing food at temperatures above 32 degrees F (0 degrees C), a freezer compartment is capable of storing food at temperatures at or below 32 degrees F (0 degrees C), and a convertible compartment is capable of operating as either a refrigerator compartment or a freezer compartment, as defined above.

Also covered are certain assemblies used in bottom mount combination refrigerator-freezers, namely: (1) any assembled cabinets designed for use in bottom mount combination refrigerator-freezers that incorporate, at a minimum: (a) an external metal shell, (b) a back panel, (c) a deck, (d) an interior plastic liner, (e) wiring, and (f) insulation; (2) any assembled external doors designed for use in bottom mount combination refrigerator-freezers that incorporate, at a minimum: (a) an external metal shell, (b) an interior plastic liner, and (c) insulation; and (3) any assembled external drawers designed for use in bottom mount combination refrigerator-freezers that incorporate, at a minimum: (a) an external metal shell, (b) an interior plastic liner, and (c) insulation.

The products subject to the investigation are currently classifiable under subheadings 8418.10.0010, 8418.10.0020, 8418.10.0030, and 8418.10.0040 of the Harmonized Tariff System of the United States (HTSUS). Products subject to this investigation may also enter under

⁷ The existence of an interior sub-compartment for ice-making in an upper-most storage compartment does not render an upper-most storage compartment a freezer compartment.

HTSUS subheadings 8418.21.0010, 8418.21.0020, 8418.21.0030, 8418.21.0090, and 8418.99.4000, 8418.99.8050, and 8418.99.8060. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this scope is dispositive.

Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation and the issues raised in the case and rebuttal briefs by parties in this investigation are discussed in Memorandum to Paul Piquado, Assistant Secretary for Import Administration, Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea (Decision Memorandum), which is hereby adopted by this notice. A list of the subsidy programs and the issues that parties raised and to which we responded in the Decision Memorandum is attached to this notice as an Appendix. The Decision Memorandum is a public document, which is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). Access to IA ACCESS is available in the Central Records Unit (CRU), room 7046 of the main Department of Commerce building. In addition, a complete version of the Decision Memorandum is also accessible on the Web at <http://ia.ita.doc.gov/fm/>. The signed Decision Memorandum and the electronic versions of the Decision Memorandum are identical in content.

Use of Facts Otherwise Available, Including Adverse Inferences

For purposes of this final determination, we relied, in part, on adverse facts available (AFA), as provided for in sections 776(a) and (b) of the Tariff Act of 1930, as amended (Act), to determine the countervailable subsidy rate for one program under investigation. A full

discussion of our decision to apply AFA is presented in the Decision Memorandum in the section “Application of Facts Available, Including the Application of Adverse Inferences.”

Injury Test

Because Korea is a “Subsidies Agreement Country” within the meaning of section 701(b) of the Act, the International Trade Commission (ITC) is required to determine pursuant to section 701(a)(2) of the Act whether imports of the subject merchandise from Korea materially injure, or threaten material injury to, a U.S. industry. On May 23, 2011, the ITC published its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of allegedly subsidized imports from Korea of subject merchandise.⁸

Suspension of Liquidation

In accordance with section 705(c)(1)(B)(i)(I) of the Act, we have calculated an individual countervailable subsidy rate for each respondent. Section 705(c)(5)(A)(i) of the Act states that for companies not individually investigated, we will determine an all others rate equal to the weighted average of the countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and de minimis countervailable subsidy rates, and any rates based entirely on AFA under section 776 of the Act.

Notwithstanding the language of section 705(c)(5)(A)(i) of the Act, we have not calculated the “all others” rate by weight averaging the rates of DWE and SEC, because doing so risks disclosure of proprietary information. Therefore, we have calculated an average rate

⁸ See Bottom Mount Combination Refrigerator-Freezers From Korea and Mexico, 76 FR 29791 (May 23, 2011); and USITC Publication 4232 entitled Bottom Mount Combination Refrigerator-Freezers From Korea and Mexico: Investigation Nos. 701-TA-477 and 731-TA-1180-1181 (Preliminary) (May 2011).

using other information on the record.⁹ Since both DWE and SEC received countervailable export subsidies and the “all others” rate is an average based on the individually investigated exporters and producers, the “all others” rate includes export subsidies.¹⁰

Company	<u>Ad Valorem</u> Net Subsidy Rate
Daewoo Electronics Corporation	12.90 percent
LG Electronics Inc.	0.30 percent
Samsung Electronics Co., Ltd./Samsung Gwangju Electronics Co., Ltd.	2.46 percent
All Others	2.79 percent

Because the Preliminary Determination was negative, we did not instruct U.S. Customs and Border Protection (CBP) to suspend entries of subject merchandise. In accordance with sections 705(c)(1)(B)(ii) and (C) of the Act, as applicable, we are directing CBP to suspend liquidation of and to require the posting of a cash deposit or bond on all imports of the subject merchandise from Korea, other than those produced and exported by LGE because LGE’s rate is de minimis, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the Federal Register. The suspension of liquidation will remain in effect until further notice.

If the ITC issues a final affirmative injury determination, we will issue a CVD order. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

⁹ See Memorandum to the File, “Calculation of the All Other Rate in the Countervailing Duty Investigation of Bottom Mount Combination Refrigerator-Freezers from the Republic Of Korea,” dated concurrently with this notice.

¹⁰ See, e.g., Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination, 75 FR 57444 (September 21, 2010).

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration. In accordance with section 705(b)(3) of the Act, because our preliminary determination was negative and our final determination is affirmative, the ITC will make its final determination within 75 days after the Department makes its final determination.

Return or Destruction of Proprietary Information

In the event that the ITC issues a negative final injury determination, this notice will serve as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This determination is issued and published pursuant to sections 705(d) and 777(i) of the
Act.

Paul Piquado
Assistant Secretary
for Import Administration

March 16, 2012
Date

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